



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/00BU/LAM/2019/0003**

Property : **244-250 Ayres Road, Old Trafford,
Manchester M16 9GE**

Applicant : **Mr Philip Crawford**

Respondents : **(1) Ayres Road Management Company Ltd
(2) Ms Lynne Henry**

Type of Application : **Landlord and Tenant Act 1987 – s 24**

Tribunal Members : **Regional Surveyor N. Walsh
Judge J. Holbrook**

**HMCTS Code
(Paper, video, Audio)** : **A: Audio Remote**

Hearing Date : **31 March 2021**

Date of Decision : **24 May 2021**

DECISION

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DECISION

The Tribunal does not consider it just or convenient to appoint the Applicant, Mr Crawford, as the Tribunal appointed manager. The application is refused.

The Tribunal accepted the withdrawal of the Respondents' respective cost applications at the hearing.

Covid-19 pandemic: description of hearing

This has been a remote hearing which has been consented to by both the Applicant and the Respondents. The form of remote hearing was A: AUDIOREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested one, and all issues could be determined in a remote hearing.

Background

1. The Tribunal received an application dated 26 March 2019 seeking the appointment of Mr Philip Crawford as the manager of 244-250 Ayres Road, Old Trafford Manchester M16 9GE (the Property). The application was made by Mr Philip Crawford the long leaseholder owner of Flat 1, 244 Ayres Road and Flat 1, 248 Ayres Road.
2. The Tribunal did not inspect the Property but we understand it to comprise four former Victorian houses, which have been converted to provide three flats in each former house, totaling some twelve flats in all.
3. The Tribunal must determine whether the power to appoint a manager in respect of the Property arises in the circumstances of this case and, if so, whether it is just and convenient to appoint the Applicant as manager of the Property. For reasons we shall explain, however, the focus of this case is very much on the second of these issues: whether or not it is just and convenient to appoint Mr Crawford as the manager.
4. On 25 July 2019 the Tribunal issued directions. Due the onset of the Covid-19 pandemic the Tribunal was unable to arrange a face to face hearing within the originally envisaged timescales. On account of this and reflecting the deficiencies in the compliance with the Tribunal's initial directions, the Tribunal issued supplementary directions, dated 26 November 2020, detailing the Tribunal's expectations of the parties and again reiterating the witness statement and documents required.
5. When the Applicant was unable to join the previously arranged video hearing on 25 November 2020, due IT technical issues and no fault of his own, the Tribunal took the opportunity to issue a Case Management Note to address the parties' ongoing failure to fully comply with directions. While there followed some improvement in the quality of amended Statements of Case significant deficiencies remained, however after a review of the papers the Tribunal concluded that these deficiencies were not so significant as to adversely impair

its ability to conduct a fair hearing or to make its determination. A remote video hearing was therefore scheduled for 31 March 2021. Regrettably again the technology failed on the morning of the hearing, this time with a number of the Respondents unable to connect to the video hearing. The Tribunal was however able to convene the hearing using the BT Meet Me facility and the hearing was successfully concluded over the telephone.

The Statutory Framework

6. Section 24 of the Landlord and Tenant Act provides:

- (1) The appropriate tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—
 - (a) such functions in connection with the management of the premises, or,
 - (b) such functions of a receiver, or both, as the tribunal thinks fit.
- (2) The appropriate tribunal may only make an order under this section in the following circumstances, namely
 - (a) where the tribunal is satisfied—
 - (i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and
 - (ii)
 - (iii) that it is just and convenient to make the order in all the circumstances of the case;
 - (ac) where the tribunal is satisfied—
 - (i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;

Hearing, submissions and evidence

7. A remote audio hearing was held on 31 March 2021. The Applicant, Mr Crawford, represented himself. Messrs. David Brown and Richard McElvanney represented the first Respondent, Ayres Road Management Company Limited. Ms. Lynne Henry, the Landlord and second Respondent, was also present and represented herself.
8. The Tribunal opened the hearing by welcoming the parties and thanking them for joining by telephone and particularly for their patience as we all grappled with the technology. The Tribunal noted that the application is opposed by the Respondents and to assist the parties in focusing their oral submissions and evidence, the Tribunal provided an overview of the approach that it would be adopting in making its determination. In particular, the Tribunal set out some of the key legal considerations and some of the pertinent matters that it had gleaned so far from the paper submissions received, which have helpfully narrowed somewhat the issues to be determined.
9. The Tribunal advised that an application under S24 of the Landlord and Tenant Act 1987 is a fault-based jurisdiction. S24(2) of the Act specifies these as constituting the “breach of any obligation owed ... to the tenant under his tenancy and relating to the management of the premises” and where the “relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice)”. The Tribunal noted that the principal focus of both parties’ submissions was, and understandably so, on the management failings at the Property both currently and when the Property was previously managed by Mr Crawford.
10. The Tribunal observed that the Respondents accept in their Statements of Case that the Property is not being managed properly and that indeed the Property has not been effectively managed for a number of years, albeit allegedly because of the ongoing interference by Mr Crawford. It is worth mentioning that the first Respondent, the Ayres Road Management Company, is a residents’ management company. Mr Crawford is a former director of the residents’ management company and he, together with his property management company Febran, managed the property until 2016. This arrangement ended acrimoniously in late 2016 when Mr Crawford was removed as a director the Management Company. Mr Crawford’s complaints about the management of the Property relate to the period since responsibility for managing the Property were taken away from him. The Tribunal outlined that notwithstanding the reasons for this failure, as there is no dispute that the Property is not being currently properly managed, the first and prerequisite limb of S24 of the Act has been met.
11. The Tribunal outlined that it is however not sufficient simply for the Tribunal to find that the Property is not being managed correctly; it can only appoint a manager and, specifically Mr Crawford as the manager, when as stated in the Act it is “just and convenient” to do so.

12. Previous Tribunal and Upper Tribunal cases have established a number of important principles which are relevant to the determination of whether or not it is “just and convenient” to appoint Mr Crawford. Including:
 - That the appointment of a manager is a draconian power, removing an existing party’s legitimate and usually contractual right to manage, and it should therefore be exercised judiciously and as a last resort.
 - S24 of the Act is a problem-solving jurisdiction and is designed to be used where the Tribunal is satisfied that it will resolve previous management failings and ensure an effective scheme of management going forward during the term of the appointment.
 - The appointment of a manager is forward looking and should not overly look backwards and focus on past issues. Instead its focus must be to see if a resolution is likely to be found by the appointment of the proposed manager or not.
13. Mr Crawford outlined that the Property had been mismanaged since he ceased to manage the Property on behalf of the Ayres Road Management Company in 2016. He stated that he has been refused copies of the accounts and relevant invoices despite repeatedly requesting them. Mr Crawford considers that the flats have been rendered unsaleable because of poor block management, a lack of relevant service charge and block information being made available, and the services charge either not being levied or being demanded incorrectly and not in line with statutory requirements.
14. Mr Crawford outlined that he had over 35 years’ experience managing property and that when he managed the Property it was managed correctly, and that he held the service charge monies on trust and budgeted and accounted for every line of expenditure. He alleges that since December 2016 there has been a total lack of openness and transparency for leaseholders. Additionally, he claimed that the Management Company has failed to operate an appropriate redress scheme nor was he offered the opportunity to purchase the freehold when he should have been.
17. Mr McElvanney asked Mr Crawford how he would resolve the present position if he was appointed as the Manager given that, with the exception of Mr Rawlings, all the other leaseholders were opposed to his appointment. Judge Holbrook asked the same question of Mr Crawford later and the answer was the same. Mr Crawford outlined that he would manage the Property as he did previously, which he maintained would resolve the issues because the Property would then be correctly managed. He would bring transparency to the service charge finances but other than that he had no plans to do anything differently.
18. Mr McElvanney and Ms Henry put a significant number of questions to Mr Crawford. Most of which related to matters which were set out in full in the parties’ written submissions and so it is not necessary to repeat these in detail and verbatim here. In the main these questions related to the availability and receipt of accounts and invoices, the reasons for non-payment of service

charge arrears, the failure of Mr Crawford to disclose his connection with Febran the management company employed by Mr Crawford when he previously managed the Property, the issues surrounding the fire safety and the difficulties encountered on the transfer of management responsibility to Dominic Shaw.

19. One point of note which did emerge from Ms. Henry's cross examination of Mr Crawford concerned how electricity and gas demands addressed to Ms. Henry were only seen by her for the first time in the Applicant's bundle. Mr Crawford explained that he found these letters opened in the common areas and that he had picked them up and taken copies of them.
20. Mr McElvanney on behalf of the first Respondent outlined that when Mr Crawford was managing the Property he operated in an opaque fashion and that he had lost the trust of both leaseholders and directors in the Management Company, which is why he was ultimately removed as a director of the management company and as the managing agent for the Property. Mr McElvanney alleged that there was also numerous and significant unexplained cash withdrawals in the accounts during Mr Crawford's time as the manager. He also drew the Tribunal's attention to the fact that when a new managing agent was appointed the service charge bank accounts held zero balances.
21. Mr McElvanney alleged that not only did Mr Crawford not co-operate with subsequent appointed management agents, he harassed and bombarded them with repeated calls and e mails. This unrelenting harassment was, Mr McElvanney alleges, why Dominic Shaw resigned as the management agent and it is also why other subsequent agents resigned.
22. Ms Henry and Mr Brown also made oral submissions, which supported and reiterated the comments made by Mr McElvanney.
23. Mr Crawford took the opportunity to question both Mr McElvanney and Ms Henry. Again, these questions related principally to who should have disclosed what accounts and invoices and did not. The Tribunal does not however need to make specific findings on all these matters as the Tribunal's determination does not in fact turn on these points, as explained below.

Conclusion

24. As noted above where certain specified management failings exist, the Tribunal is enabled under S 24(2) of the Act to appoint an appropriate manager if it is "just and convenient" to do so. The question for the Tribunal to consider is therefore, is it appropriate to do so and specifically, should the proposed manager, the Applicant Mr Crawford, be appointed.
25. It is apparent that the Property is no longer being effectively managed by the Management Company, due to their inability to appoint and retain managing agents to undertake the required day to day management of the Property and to levy service charges. This is not a sustainable long-term position and indeed this has now been the position for a number of years. The Tribunal is in no doubt that this is having a detrimental impact on the Property, the

leaseholders and the occupants. In the absence of any evidence of the Ayres Road Management Company being able to remedy this situation imminently, the Tribunal considers that it would be 'just and convenient' to appoint a suitable manager to this role to remedy these management failings.

26. The Tribunal must accordingly next consider the merits and suitability of the only manager currently being proposed and decide if it is "just and convenient" for Mr Crawford to be the Tribunal appointed manager. The Tribunal, in undertaking this exercise, is principally looking forward with an eye to establishing whether or not the proposed manager could realistically resolve the current difficulties. Nevertheless, it is important to have regard to the history of the Property and the previous interactions between the parties, as this will also assist and inform the Tribunal's assessment as to whether or not Mr Crawford is appropriate for this role.
27. Mr Crawford was until 30 November 2016 a director of the Ayres Road Management Company and his company, Febran, undertook the day to day management of the Property until both were removed at an Extraordinary General Meeting of the Ayres Road Management Company on 21 February 2017. Since then the relationship between the parties has completely broken down. To describe it as being acrimonious and combative would not be to overstate the present situation. The parties have made serious allegations and counter allegations against one another. Mr Crawford has instigated a private prosecution, secured a judgement for non-payment of management fees to Febran, written to 4 different Members of Parliament, the police, the Information Commissioner and many others detailing his complaints against the Management Company and specific directors alike.
28. Given the clear animosity between the parties the Tribunal is at a loss to understand how Mr Crawford could conceivably consider that appointing him as the manager would bring about an effective resolution in these relationships or enable a cohesive and workable scheme of management for the Property. Indeed, when this question was put to Mr Crawford by both the Tribunal and Mr McElvanney he stated that he would simply revert back to managing the Property as he did previously because he managed it correctly. Mr Crawford's complete lack of any empathy for the majority of the Leaseholders concerns or acceptance that a different management approach would be needed to resolve the current issues is a serious concern to the Tribunal.
29. In determining this application, it is not necessary for the Tribunal to make findings in respect of each and every allegation made by the parties. Particularly as many of these allegations relate to criminal matters and fall outside the Tribunal's jurisdiction, and in many instances there has been insufficient evidence presented to make such a finding in any case. What is clear to the Tribunal however is that Mr Crawford has not accepted the Management Company's decision to remove him and his company, Febran, as the day to day manager/managing agents. There is evidence that he has not co-operated with subsequent agents or the Management Company. This is supported by his own admission that he took and withheld post from communal areas addressed to Ms. Henry. Also, when asked directly by the Tribunal how he assisted in the effective transition of the management from

Febran to Dominic Shaw, he outlined that he told Mr Shaw where he was going wrong and what needed to be done. This presents a picture of a person who is not focused on seeking a resolution through consensus and co-operation but rather one bent on correcting a perceived wrong.

30. Mr Crawford informed the Tribunal that he has over 35 years' experience in property management. Yet despite this he has repeatedly failed to properly understand and comply with the Tribunal's numerous directions to provide a witness statement detailing his professional experience, qualifications, terms of the retainer and details of his professional indemnity and public liability insurance. When asked about this by the Tribunal at the hearing he acknowledged this oversight and advised that he could provide this at a later date, adding that he would take out suitable insurance if appointed and his fees would be the same as he previously charged. There is simply insufficient evidence before the Tribunal to provide us with confidence as to his professional competence or experience. In fact, his repeated inability to provide a suitable witness statement and the additional required information would suggest to the Tribunal that Mr Crawford is not a suitable candidate for this role.
31. This conclusion was further confirmed when Mr Crawford outlined that he had not been a Tribunal appointed manager before, was unable to articulate what the duties of a Tribunal appointed manager are over and above managing the Property on a day to day basis. The Tribunal was further concerned when Mr Crawford indicated that he was seeking an indefinite appointment rather than the normal 3 yearly fixed term appointment.
32. The Tribunal also asked the Applicant if he saw any potential conflict of interest with being a Leaseholder in the Property while at the same time being the appointed manager and how he would manage that. Mr Crawford did not see that there would be any potential conflict of interest that would need to be managed. His lack of awareness of such conduct issues again raises further concerns as to the suitability of Mr Crawford for this role. While the Tribunal has in exceptional cases appointed a leaseholder within a development as the manager, this has only been done where it has been an absolute necessity and suitable assurances have been provided to re-assure the Tribunal that any conflicts of interest will be managed both correctly and transparently. Where, as in this case, no such awareness or assurances have been forthcoming it would not be appropriate for the Tribunal to appoint a leasehold applicant to this role.
33. The Tribunal reservations about Mr Crawford's conduct, both before and during these proceedings, his inability to satisfy the Tribunal as to his suitability for the role in terms of his professional qualifications and experience, insurance arrangements or his ability to be able to effectively manage the personal conflicts that this role would most definitely present him, coupled with his complete inability to outline a non-confrontational scheme of management which would garner the support of the majority of the Leaseholders, mean that Mr Crawford must by any measure be considered a wholly unsuitable candidate.

Costs

34. The Tribunal invited both the first and second Respondents to make submissions in respect of their separate cost applications, which were contained within their Statements of Case. After providing the Respondents with an explanation of the Tribunal's jurisdiction in respect of costs and Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Respondents applied to withdraw their applications. The Tribunal accepted the withdrawal of both applications.

Niall Walsh
Regional Surveyor
24 May 2021